

May 15, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Notice, Docket WT 96-86

Dear Ms. Dortch:

On May 14, 2003 the undersigned and Mr. Ralph Haller of Fox Ridge Communications met with Bryan Tramont, Senior Legal Advisor to the Chairman; Peter A. Tenhula, Director, Spectrum Policy Task Force and Acting Deputy Chief, Wireless Telecommunications Bureau; Trey Hanbury, Special Counsel, International Bureau; Barry Ohlson, Commissioner Adelstein's Legal Advisor for Spectrum and International Issues; Jennifer Manner, Senior Counsel for Commissioner Abernathy; and Sam Feder, Legal Advisor on Spectrum and International Issues for Commissioner Martin.

The topic of discussion during these meetings was the spectrum efficiency requirements in the 700 MHz Public Safety Spectrum. Specifically discussed was the pending Petition for Reconsideration to the 5th Report and Order in WT Docket No. 96-86. Attached is a sheet outlining the substance of the discussions during the May 14th meetings with the above noted FCC personnel.

If there are any questions, please do not hesitate to contact me. I can be reached at (434) 455-9465.

Sincerely,



Robert J. Speidel, Esq.
Manager, Regulatory Policy

Attachment

cc: WT 96-86 (electronic filing & via USPS)
Bryan Tramont (via USPS)
Peter A. Tenhula (via USPS)
Trey Hanbury (via USPS)
Barry Ohlson (via USPS)
Jennifer Manner (via USPS)
Sam Feder (via USPS)
Ralph Haller (via USPS)

5th Report and Order, WT Docket No. 96-86

(6.25 kHz or equivalent voice efficiency mandate for 700 MHz Gen'l Use and State License Spectrum)

- **FCC Action in 5th R&O**

- Accept applications filed on or before 12/31/06 to use 12.5 kHz or equivalent efficiency equipment in the 700 MHz Public Safety (PS) Gen'l Use and State License spectrum.
- Require applications filed after 12/31/06 for *new* systems in the 700 MHz PS Gen'l Use and State License spectrum to use 6.25 kHz or equivalent efficiency equipment. **(Reconsideration Requested)**
- Permit legacy licensees (licenses filed prior to 12/31/06 for 12.5 kHz operations) to purchase dual mode equipment (operates in 12.5 or 6.25 kHz efficiency mode) for system expansion or maintenance and operate to operate such equipment in the 12.5 kHz mode until 12/31/16.
- Ban the marketing, manufacture and importation of 700 MHz Gen'l Use and State License PS equipment that is only 12.5 kHz or equivalent efficiency after 12/31/06. **(Reconsideration Requested)**
- Cease type certifying 700 MHz PS equipment that is exclusively 12.5 kHz or equivalent efficiency after 12/31/06.
- Require use of 6.25 kHz equipment or equivalent efficiency for all 700 MHz Gen'l Use and State License operations after 12/31/16.

- **Concerns about the Petition for Reconsideration**

- **Legal Sufficiency** – Does the Petition meet the legal standards for Reconsideration outlined in FCC case law? *See, e.g.,* 800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Services, 7 FCC Rcd 1753 (1992) and *See also*, Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act: Part 73 Definition and Measurement of Signals of Grade B Intensity, Order on Reconsideration, 14 FCC Rcd 17373 (1999); Elimination of Telephone Company-Cable Cross Ownership Rules, Sections 63.54-63.56, for Rural Areas, 91 FCC 2d 622 (1982); Amendment of Section 73.636(a) of the Commission's Rules (Multiple Ownership of Television Stations), 82 FCC 2d 329 (1980).
- **Factual Considerations**
 - Refarming requires timely availability of the necessary technologies. Why not mandate application of the technologies in this “new” PS spectrum as soon as possible?
 - Mischaracterization of significant “conventional use” in 700 MHz PS Gen'l Use and State License spectrum. Per PS users, it will NOT happen!
 - What is wrong with motivation towards highly efficient, highly interoperable, wide-area shared systems?
- **Practical Realities**
 - Commission has said it will review progress of equipment development and adjust as necessary, including mandated dates.
 - Commission has a definite right to adopt rules that will minimize the prospect of waivers in 2016.
 - Command & Control spectrum management is appropriate for PS.

- **Summary**

- The Commission has adopted rules in the 5th R&O, including those upon which Reconsideration has been requested, that are clearly in the “**public interest.**” Nothing in the Petition for Reconsideration, or in the letters supporting the petition, provides a justifiable, legally sufficient, basis for the Commission to react positively to the Petition's requests.



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